

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Southern Union Company, a
Delaware corporation,

Plaintiff,

v.

Southwest Gas Corporation, a
California corporation, et al.,

Defendants.

CV-99-1294-PHX-ROS

Order

On April 4, 2000, Southern Union filed a Motion to Compel Production of Documents and Testimony from Tiffany & Bosco LLP and Mark Dioguardi Over Claims of Privilege Asserted on Behalf of ONEOK and Jack Rose ("Motion to Compel") (Doc. #231). In short, Southern Union seeks to compel the production of a document Bates numbered MDD-00118 ("Document") containing Dioguardi's handwritten notes regarding a conversation he had with Jack Rose in early March 1999. On May 29, 2001, the Special Master issued an Order (Doc. #922) denying Southern Union's Motion to Compel the Document, and Southern Union appealed to this Court from the Special Master's ruling in June 2001.

After some briefing and hearings on Southern Union's appeal, the Court found at the January 24, 2002 hearing that (1) the attorney-client privilege applied to the communication between Dioguardi and Rose reflected in the Document, and (2) that Southern Union had not met its burden of establishing that the crime-fraud exception applied to the Document. The Court, however, permitted additional briefing on the application of the exception.


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1 Having considered the post-hearing briefs and the evidence and arguments contained
2 therein, the Court finds that Southern Union has still not met its burden of establishing that
3 the crime-fraud exception applies to the Document. Accordingly, the Court will affirm the
4 Special Master's Order with respect to Southern Union's Motion to Compel the Document.
5 A written opinion regarding the Court's ruling will follow this Order.

6 **IT IS THEREFORE ORDERED** that the Special Master's May 29, 2001 Order
7 (Doc. #922) is **AFFIRMED** with respect to Southern Union's Motion to Compel production
8 of Document No. MDD-00118.

9 DATED this 3 day of June, 2002.

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Roslyn O. Silver
United States District Judge